

1 September 2003

The Secretary
Senate Community Affairs References Committee
Suite S1 59
Parliament House
CANBERRA ACT 2600

Dear Madam/Sir

Enclosed herewith is a submission to the Senate Community Affairs References Committee Inquiry into Children in Institutional Care from the Board of Advice of the Forde Foundation.

The members of the Board of Advice wish the Committee well with its deliberations. Should the timing of the public hearings be suitable, I and other members of my Board would welcome the opportunity to make submissions in person to elaborate issues outlined in brief in the submission enclosed.

I look forward to receiving a copy of your report as soon as it is available.

Yours sincerely

Leneen Forde AC
Chairperson

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE INQUIRY INTO CHILDREN IN INSTITUTIONAL CARE

The Forde Foundation

The Forde Foundation is a charitable trust established in 1999 by the Queensland Government with a seeding fund of \$1 million in response to the Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions, (Forde Inquiry). Following the 2001 state election a further \$1 million was made available to the Foundation. The Queensland Government also funds the secretariat of the Foundation. Since 2001. Donations of about \$117,000 from the congregations of major churches and their agencies and about \$10,000 from individuals have been made to the Trust Fund.

The Forde Foundation Trust Fund is administered by the Public Trustee of Queensland to distribute monies to former child residents of Queensland institutions on the recommendations of the Foundation Board of Advice of which Ms Leneen Forde AC is chairperson. (See Deed of Trust, Appendix 1 and Members of the Forde Foundation Board of Advice, Appendix 2,)

The Forde Foundation Board conducts a grants program twice per year and invites former residents to apply for assistance for education, health, family reunion and basic necessities of life. (See Appendix 3 for reports on first two rounds). To date, four grant rounds have been held and approximately \$392,963 has been distributed.

Scope of the Submission

Many of the matters detailed in the Senate Community Affairs References Committee into Children in Institutional Care Terms of Reference are addressed in the report of the Forde Inquiry, especially those at 1(a). The Board does not propose to respond to any of those in detail, but to comment on other terms of reference on which it has gained a perspective in the course of administering the grants program.

The information the Board has gained has come from applications made for assistance and accompanying documents, face to face discussion with former residents and from the observations of the two Executive Officers who deal daily with former residents of institutions and those formerly in foster care. As a consequence most of the information below is based on experience rather than on systematic investigation. In general, that experience supports and amplifies the findings of the Forde Inquiry.

Commonwealth/State Jurisdictions

In making this submission the Board recognises that Queensland laws and services are the subject of its comment and that the Senate has limited capacity to make binding recommendations to the Queensland Government on these matters. However the problems described below are common to all the States and Territories and the Commonwealth Government needs to be cognisant of these circumstances in the funding arrangements with the States.

Beneficiaries of the Forde Foundation

The beneficiaries of the Forde Foundation Trust Fund are former residents of Queensland institutions as specified by the terms of reference of the Forde Inquiry and children formerly in foster care in the State. It does not assist people formerly in care in other states of Australia nor children from Queensland institutions caring for those with a disability or aboriginal children from the dormitories on Aboriginal Reserves.

Because the Forde Foundation is a charitable Trust it is possible that the Board receives applications only from the most traumatised and needy segment of the former resident population. It is possible that some of this population live successful and prosperous lives free of the social and psychological damage so frequently noted in the observations that follow. The comments of former residents who have maintained extensive contacts from childhood however suggest that few children who experience institutional care for long periods or at crucial stages of their development escape detrimental effects in later life. There is evidence that even more damaged and isolated former residents were not aware of the Forde Inquiry and are not aware of the agencies that have been established since.

Terms of Reference:

1(a) (i), (ii), (iii)

1. That the following matters be referred to the Community Affairs References Committee for inquiry and report by 3 December 2003:

(a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:

- (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,***
- (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection,***

The Inquiry found that unsafe, improper and unlawful care and treatment of children occurred in most of the institutions for which submissions were made. Please see the following chapters from the Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions:

- 5 Orphanages and Other Residential Institutions (1930-1980)
- 7 Correctional Facilities (1900-1998)
- 9 Current juvenile detention centres and
- 12 Conclusions – see specifically sections 12.3 Past unsafe, improper or unlawful care or treatment – p 277; past breaches of statutory obligations – p. 279. (*Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions and see also confidential closed report, Neerkol, Karrala*).

1 (a) (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places;

The Board has no means of estimating the scale of any unsafe, improper or unlawful care or treatment in such institutions or places. However, the number of people presenting to the Foundation, suggest that the instances of abuse were substantial. Further, during specific periods of particular institutions, abuse or the threat of abuse was present daily.

1(b) the extent and impact of the long term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing support mechanisms;

The following comments are made in the knowledge that “survivors are from a wide-range of cultural backgrounds, live in a wide spectrum of circumstances, went to different institutions at different times run by different organisations and experienced varying forms and degrees of abuse and have varying expectations as to the way to achieve and what will be involved in closure and/or renewal of personal terms. “

(from the Law Commission of Canada Report, 2000 - quoted in O’Connor – Report to the Queensland Parliament by the Forde Implementation Monitoring Committee August 2001, p.129

The Board has become aware of the following impacts of child abuse and neglect in state and church run residential institutions and foster care:

On individuals:

Low levels of literacy and numeracy, poor self esteem; high incidences of alcoholism, substance abuse, isolation, suicide; high levels of unemployment, homelessness and imprisonment; poor physical, dental and mental health.

Former residents frequently have poorly developed social and life skills. Those who were able to find employment have tended to cluster in unskilled and manual occupations with low remuneration. Many experience difficulty in maintaining stable and adequate housing. It appears that a higher than average number of women found employment as sex workers.

Some former residents who are now in their 40’s 50’s and 60’s were placed in youth detention for running away from abusive treatment in institutions or foster care or for being considered to be “uncontrollable”. Further escapes or attempted escapes from youth detention resulted in incarceration in adult prisons in some circumstances or in psychiatric institutions in others. These experiences contributed in very damaging ways to their self concepts and capacities to live as effective participants in society.

On families:

There is a high incidence of relationship breakdown with spouses and children arising from a lack of appropriate models of care and affection in childhood; separation and

alienation from siblings and difficulty in relating to members of family from whom they may have been estranged as a consequence of being placed in care. Substantial numbers of former residents live in isolation and fear of engagement with society. The children of former residents tend to suffer inter-generational effects such as poverty, behaviour difficulties, poor educational achievement and criminal behaviour. Many children of former residents also become wards of the state.

On Australian society

The trauma of institutional care of children contributes to high levels of poverty, welfare dependency, imprisonment, physical and mental health care costs. The Board receives many requests for assistance for medication, stable housing and for medical, dental and mental health services. It has formed the view that the ex-resident population suffers disproportionately from oral, mental and physical health disorders. Many appear to be prematurely aged. The poor health status of former residents bears substantially on the public health systems on which most of them rely.

The high costs to society of imprisonment are well understood. Because the Foundation offers assistance to people formerly in youth detention centres, a substantial segment of the clientele of the Foundation are in prison. There were also children, usually teenage boys who were institutionalised into the correctional system through inappropriate placements in detention centres, due to a lack of alternatives for them, or because of minor discipline problems. In its most recent round of grants, the Foundation received 21 applications from prisoners. This represented 8.1% of total applications for that round. Those who have applied from prisons are serving sentences for a broad spectrum of crimes from theft, to drug crimes, rape and murder. Several identify their abusive childhoods as the causes of their serious crimes.

Adequacy of existing support mechanisms

Former residents report significant dissatisfaction with support from existing mainstream services. Many have difficulty in establishing trust and express specific distrust of government and church based services, which they see as being arms of the institutions that abused them. Often, mainstream agencies and professionals fail to comprehend how severely individuals are affected by institutional childhood abuse or neglect. Former residents find little understanding of their childhood experiences in institutions and limited support for conditions such as post traumatic stress disorder from which many suffer.

Dissatisfaction with mainstream services is most evident in relation to services for the survivors of sexual abuse. While current rape crisis services deal with the immediate needs of female victims of rape there are few services to address the ongoing trauma of sexual abuse of both girls and boys sustained some years ago.

In Queensland, the Queensland Government contributes to the funding of four entities which provide specific services for former residents, namely -

- ◆ The Esther Centre (Centre for Addressing Abuse in Human Services and Faith Communities), which provides support for people who have experienced physical, sexual, emotional and spiritual abuse in church institutions, faith communities and human services.
- ◆ Aftercare Resource Centre (ARC), which is responsible for provision of direct and brokered counselling services in Queensland and interstate, assistance with educational opportunities, record searches, family reunions and advice on support groups.
- ◆ The Historical Abuse Network (HAN), which is an informal network of former residents of church and government institutions and was established to support people who had experienced abuse within those institutions. It meets regularly, holds forums and provides resources to support people.
- ◆ The Forde Foundation – a charitable trust which is described earlier in this document.

The Department of Families employs a Forde Contact Officer whose role includes the provision of a central liaison point of contact for former child residents, high level advice to the Director-General and Minister, and development and implementation of strategies in conjunction with former residents relating to the recommendations of the Forde Inquiry. The Department of Families also has a freedom of information service which ex-residents and the Foundation use for the purpose of accessing family links and historical information.

It is understood that each of these separate bodies is making submissions to the Senate Inquiry and that therefore only limited comment is appropriate.

It must be acknowledged that the Queensland Government, in establishing the Forde Inquiry and in funding these agencies as part of its response to the Inquiry's findings, has gone much further than any other Australian State in acknowledging and redressing the harm done to former children placed in institutions and foster care. Clearly in allocating resources the Government has to struggle with the competing needs of the current child protection system and the need for redress of the failures of the past. Nonetheless significant gaps in services persist for former children in care of the State despite recent efforts by government to redress the historical underfunding (compared across states) of relevant family and child protection services.

A principal limitation affecting all these agencies is that they are Brisbane based while many former residents are located throughout the State and interstate. The agencies are insufficiently funded to overcome the inequities in access that result.

Inadequacy of funding and difficulty of access has meant, for example, that for some time ARC has been unable to guarantee counselling to former residents who are in prison, where there are prisoners whose specific needs cannot be met within the prison system.

While ex-residents value the existence of the Forde Foundation, criticisms include:

- ◆ concerns about the small amount of funds available for dispersal;
- ◆ the process of making applications which reinforces the feelings of powerlessness and dependency of their childhood. Counsellors have noted that for many people the grants process has traumatised them further;
- ◆ the inaccessibility of the Board;
- ◆ in the absence of any other form of redress there is a misperception that the Foundation is providing a form of compensation, and consequently, a very inadequate compensation;
- ◆ the current economic environment provides poor and even negative returns on funds invested which has necessitated cutting into the capital of the fund.

The Foundation has found, in its attempts at fundraising, that the group does not attract significant support from corporate, church or individual donors, particularly when competing for donations with charities for children, illness or disability.

The Foundation, given the limits of the Deed of Trust under which it was established has no developmental capacity and few options for modification of its practice.

The report to the Queensland Parliament by the Forde Implementation Monitoring Committee in 2001 stated:

“(1) The Forde Foundation is insufficiently funded to meet the enormous level of need experienced by ex-residents. The cumulative harm done to the victims of institutional abuse over decades cannot be effectively addressed in a short period, or with the limited resources currently available for distribution.

(2) The existence of the Fund does not address the principle of *compensation* underlying recommendation 39. The Forde Foundation was *not* established to pay compensation to former residents. It was intended to provide support to them by providing financial assistance to cover family reunion costs, counselling support services and self-improvement expenses. In this sense the Fund’s role – while valuable – is in truth more concerned with the provision of services as required by recommendation 40, than it is with the compensatory spirit of recommendation 39.”
(O’Connor, op cit., pp 122-123)

There is a dearth of research in this area and a need to fund such research. The Board recommends that the Commonwealth fund research, not only to answer questions relating to historical issues, but also to apply research findings in this area to other situations where it is known that children are at risk of suffering similar disadvantage, neglect or abuse. Currently, professionals dealing with and formulating policy for refugee children, those in some foster care situations and children who are homeless may benefit from clearer understandings of the short, medium and long term effects of this type of childhood trauma.

(c) the nature and cause of major changes to professional practices employed in the administration and delivery of care compared with past practice;

The Board has no current involvement with professional practice in the delivery of care and makes no new comment in relation to this. Comment found in Chapter 11 – “Evaluation of Current Legislation and Departmental Practice, of the Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions, however, should be reviewed.

(d) “whether there is a need for a formal acknowledgement by Australian governments of the human anguish arising from any abuse and neglect suffered by children while in care”.

The Queensland Government and heads of major churches have already made formal apologies to the victims of abuse in institutions. It is recommended that apologies be made in States where they have not already occurred. Such apologies need to be accompanied by tangible expressions of regret such as provision of services and systems of redress. See (e) below.

(e) “in cases where unsafe, improper or unlawful care or treatment of children has occurred, what measures of reparation are required”.

The Board recommends that the Senate Committee investigate the models of reparation developed in Canada, Ireland and any other relevant jurisdictions to redress harm done to former children in care. On this basis it urges the Committee to make recommendations to the States and the Commonwealth regarding a model of reparation with non-adversarial, transparent proceedings by which to provide such redress in Australia. It is envisaged that the churches would engage with the States in providing such redress.

The Board further recommends that the Commonwealth provide funds to match those put forward by the States and religious bodies to establish redress commissions in each of the States.

There has not been an apparent willingness on the part of churches involved in the past operation of institutions to recognise this specific responsibility to those formerly placed in their care. They feel that as key providers of welfare services in the community that ex-residents are able to access their existing services. This fails to acknowledge the former historical relationship marked by abuse and neglect suffered by ex-residents and the unwillingness of many to avail themselves of such services as it places them once again in a position of powerlessness.

(f) “whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children”.

Both the standards of proof and statutes of limitations with regard to criminal and civil proceedings in Queensland have meant that very few cases brought by former residents have gone to trial and, of those tried, none have succeeded. The statutory limit of 3 years after an incident, and 3 years after the age of 18 in the case of children has meant that most claims fall outside this limit. Recent legislation, *Personal Injuries Act 2002* and the *Civil Liability Act 2003* have imposed further procedural barriers and time limits. In the case of the former Act victims cannot file an application to the court later than 9 months after the incident.

These several legal barriers and the lapse of time since the abuse occurred for most former residents means that recourse to legal proceedings is not a viable option. There is a further conundrum for ex-residents seeking some form of compensation. They have been advised by government to seek compensation through the legal system, and, given the relative poverty of most claimants, to approach legal aid for such actions. Legal aid services in this state, however, will not consider undertaking actions such as this. The State has a moral obligation arising from its statutory obligations to children formerly in care to develop a system of redress which provides some restorative justice for the harm done.

This situation seems to reflect differing outcomes from the justice system for an affluent group of ex private school pupils paid hundreds of thousands of dollars compensation by private schools as opposed to the group of ex residents from an impoverished institutional background blocked by the government’s refusal to relax the statutes of limitations provisions and the fear that “the state would go broke” from having the chance to have their claims heard in court.

In some cases involving various religious orders confidential settlement payments were made to ex-residents. These, it seems were not comparable to the restitution made by courts dealing with cases involving staff and students from private schools. The existence of confidential records held by bishops and of confidential settlement in cases of sexual abuse allegations and abuse hardly satisfies the need of government to ascertain the full extent of the problem, its pattern of support and perpetuation.

Mitigating against the efforts of ex-residents to seek recompense from the catholic church is the structuring which pits individuals against usually cash poor religious orders, or legal entities who were the owners or operators of institutions.

- (g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:***
- (i) any systemic factors contributing to the occurrences of abuse and/or neglect,***
 - (ii) any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices, and***
 - (iii) any necessary changes required in current policies, practices and reporting mechanisms.***

As with 1(c), the Board, would refer the Inquiry to Chapters 11 and 12 (Conclusions) of the Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions, for comment on this term of reference.

RECOMMENDATIONS

The following recommendations are taken from the body of the text and summarise the key issues the Board has identified.

- 1. The Board recommends that the Senate Committee investigate the models of reparation developed in Canada, Ireland and any other relevant jurisdictions to redress harm done to former children in care. On this basis it urges the Committee to make recommendations to the States and the Commonwealth regarding a model of reparation with non-adversarial, transparent proceedings by which to provide such redress in Australia. It is envisaged that the churches would engage with the States in providing such redress.**

- 3. The Board further recommends that the Commonwealth provide funds to match those put forward by the States and religious bodies to establish redress commissions in each of the States.**

Appendices:

Appendix 1:

Deed of Trust and
Deed of Variation to the Forde Foundation

Appendix 2:

Members of the Forde Foundation Board of Advice

Appendix 3:

Summary Report on the first two rounds for funding – Forde Foundation

Appendix 4:

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Appendix 4:

References

Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions. May 1999.

Confidential Closed Report of Commission of Inquiry into Abuse of Children in Queensland Institutions – Neerkol, Karrala. November 2000

O'Connor, I. (Chair) Forde Implementation Monitoring Committee. *Report to the Queensland Parliament by the Forde Implementation Monitoring Committee - August 2001.*

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